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Supreme Court of the United States

October Term, 1946.

No. 890....

Smith, Richey & Co., Inc., Eugene Walter, Central Beef Co., A. J. Olpp, Inc., A. Woursell, Berliner & Marx, Golden Packing Co., Inc., Bronx Meat Co., Edmund Mayer, Inc., Gustave Buxbaum, B. Futterman & Co., Geier & Geier, Inc., Chas. A. Beekman, H. Eppsteiner & Son, Inc., Henry Frohlich, Inc., Hanson Pkg. Corp., Intercity Prov. Corp., Interboro Packing Co., Inc., Greenpoint Beef Co., Inc., Leo Kalberman Co., George Korn & Sons, Manhattan Lamb & Veal Co.. Nevins Packing Co., Inc., Philip B. Newmark, Inc., Pyramid Packing Co., Inc., Royal Packing Co., Inc., Scanlan, Goldstein & Co., Inc., Julius Tantleff, Jamaica Wholesale Meat Co., Inc., Standard Beef Co. of L. I., Inc., Staten Island Packing Co., Charles Trautmann Company, H. Zabriskie, Eastern Meat Markets, Inc., American Products Co., D. Fullerton & Company, Inc., Greenwood Packing Co., Clem Lockerty, Gustave Sobo and Charles Freeman, on behalf of themselves and others similarly situated,

Petitioners,

AGAINST

Philip B. Fleming, Temporary Controls Administrator,
Respondent.

Petition for a Writ of Certiorari to the United States Emergency Court of Appeals and Brief in Support of the Petition.

JOSEPH COHN,
Attorney for Petitioners.

LODER APPEAL PRESS, INC., 65-67 Duane St., N. Y. C., Tel. WOrth-2-0689

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Supreme Court of the United States

OCTOBER TERM, 1946.

No. .....

Smith, Richey & Co., Inc., Eugene Walter, Central Beef Co., A. J. Olpp, Inc., A. Woursell, Berliner & Marx, Golden Packing Co., Inc., Bronx Meat Co., Edmund Mayer, Inc., Gustave Buxbaum, B. Futterman & Co., Geier & Geier, Inc., Chas. A. Beekman, H. Eppsteiner & Son, Inc., Henry Frohlich, Inc., Hanson Pkg. Corp., Intercity Prov. Corp., Interboro Packing Co., Inc., Greenpoint Beef Co., Inc., Leo Kalberman Co., George Korn & Sons, Manhattan Lamb & Veal Co., Nevins Packing Co., Inc., Philip B. Newmark, Inc., Pyramid Packing Co., Inc., Royal Packing Co., Inc., Scanlan, Goldstein & Co., Inc., Julius Tantleff, Jamaica Wholesale Meat Co., Inc., Standard Beef Co. of L. I., Inc., Staten Island Packing Co., Charles Trautmann Company, H. Zabriskie, Eastern Meat Markets, Inc., American Products Co., D. Fullerton & Company, Inc., Greenwood Packing Co., Clem Lockerty, Gustave Sobo and Charles Freeman, on behalf of themselves and others similarly situated,

Petitioners,

AGAINST

Philip B. Fleming, Temporary Controls Administrator,

Respondent.

Petition for a Writ of Certiorari to the United States Emergency Court of Appeals.

To the Honorable, the Chief Justice of the United States and the Associate Justices of the United States Supreme Court:

The above named petitioners respectfully pray that a writ of certiorari issue to review the judgment of the

United States Emergency Court of Appeals dismissing the complaint filed by petitioners in said court under Section 204 (a) of the Emergency Price Control Act, as amended (56 Stat. 23; 50 U. S. C. App. Sec. 924 [a]), with leave to petitioners to move to reinstate the complaint in the event that any proceeding should be brought against petitioners under Section 205 of said Act (56 Stat. 23, 34; 50 U. S. C. App. Sec. 925), based upon any provision of the orders and regulations objected to in the complaint, and retaining jurisdiction of the cause for such purpose, but failing to grant like leave and to retain jurisdiction for such purpose in the event of future criminal proceedings against petitioners under Section 37 of the United States Criminal Code (18 U. S. C. A. Sec. 88), or state or local price control enforcement laws.

Statutes, Regulations and Orders Involved.

The pertinent provisions of the Emergency Price Control Act of 1942 (Public Law 421, 77th Cong., 2nd Sess., 56 Stat. 23; 50 U. S. C. App., Secs. 901-946), as amended by the Stabilization Extension Act of 1944 (Public Law 383, 78th Cong., 2nd Sess., 58 Stat. 632), the Act of June 30, 1945 (Public Law 108, 79th Cong., 1st Sess.), and the Price Control Extension Act of 1946 (Public Law 548, 79th Cong., 2nd Sess.), hereinafter referred to as the Act; Section 392 of the General Business Law of the State of New York (New York Laws of 1946, Ch. 405); Section U 41-5.0 of the Administrative Code of the City of New York (N. Y. C. Local Laws for 1945, No. 35); and Supplementary Order 40 issued by the Price Administrator, as amended (11 F. R. 14,103), appear in the Appendix, *infra*, 18-24.

The maximum price regulations involved, are as stated in the first paragraph under the next heading.

Statement of the Matter Involved.

On January 18, 23, and 27, 1945, respectively, petitioners, who are meat wholesalers located in the New York City area, filed protests against Revised Maximum Price Regulation 169—Beef and Veal Carcasses and Wholesale Cuts (7 F. R. 10,381); Revised Maximum Price Regulation 239—Lamb and Mutton Carcasses and Wholesale Cuts (7 F. R. 10,688); and Revised Maximum Price Regulation 148—Dressed Hogs and Wholesale Pork Cuts (7 F. R. 8609). The protests requested consideration by a Board of Review (R. 23-24).

The objections asserted in the protests were that the said regulations, as originally issued and as amended, *in toto,* were invalid as to wholesalers and the protests sought a determination of the question of validity of the said regulations, prospectively as well as retrospectively (R. 24, 267).

On February 19, 1945, the Price Administrator, hereinafter referred to as the Administrator, ordered said protests to be consolidated and provided petitioners with an opportunity to present certain specified evidence, which petitioners filed (R. 24). On September 18, 1946, the Administrator ordered the evidential record closed and referred the proceeding to a Board of Review for a hearing, which hearing was held on October 14, 1946 (R. 25).

On October 15, 1946, the Administrator issued Amendment 64 to Supplementary Order 132 (11 F. R. 12,093), exempting livestock and meat from price control, and on the same day, without waiting for recommendations by the Board of Review, the Administrator ordered the protests to be dismissed on the alleged ground that "the protests requested prospective relief only, and, since these regulations are no longer in effect, the proceeding has become moot" (R. 25).

On November 13, 1946, pursuant to the provisions of Section 204 (a) of the Act, petitioners duly filed their

complaint in the United States Emergency Court of Appeals requesting that the protested regulations be set aside as to petitioners (R. 1-18), and, on the 26th day of November, 1946, the Administrator moved to dismiss the said complaint on the alleged ground "that the proceeding is moot" (R. 18-21).

On December 17, 1946, the United States Emergency Court of Appeals rendered judgment as stated above, without opinion (R. 39).

Basis of Jurisdiction.

The judgment of the United States Emergency Court of Appeals sought to be reviewed was entered on December 17, 1946 (R. 39). Jurisdiction of this Court is invoked under Section 204 (d) of the Emergency Price Control Act of 1942, as amended (56 Stat. 23; 50 U. S. C. App., Sec. 924 [d]), providing that judgments of the United States Emergency Court of Appeals shall be subject to review by this Court on writ of certiorari in the same manner as a judgment of a circuit court of appeals as provided in Section 240 of the Judicial Code, as amended (U. S. C., 1934 Ed., Title 28, Sec. 347).

Questions Presented.

The questions presented are:

1. Whether having followed the procedure prescribed by Section 203 (a) of the Act (56 Stat. 23, 31, 58 Stat. 632, 638; 50 U. S. C. App. 923 [a]), petitioners had a right to a determination of the validity of the protested regulations, prospectively as well as retrospectively?

2. Whether petitioners' right to a determination of the retrospective validity of the protested regulations was lost by the mere fact that meat was exempt from price control and that the question of prospective validity has become moot?

3. Whether the order of the Administrator dismissing the protests, without waiting for recommendations by the Board of Review, was authorized by Section 203 (c) of the Act (58 Stat. 632; 50 U. S. C. App. Sec. 923 [c]), which requires consideration of such recommendations?

4. Whether, having followed the procedure prescribed by Section 204 (a) of the Act, petitioners have a right to have the dismissal of their protests reviewed by the Emergency Court of Appeals?

5. Whether petitioners' right under Sections 203 (a) and 204 (a) of the Act to a determination of their protests and judicial review of the dismissal thereof, if not lost as stated in Question "2" above, has been suspended by the exemption of meat from price control until such time as enforcement proceedings would be instituted against petitioners?

6. Whether, being still subject to the protested regulations and to enforcement proceedings based on violation thereof which may be charged to have been committed by petitioners before the exemption of meat from price control, petitioners may be deprived of their right to test the validity of the protested regulations by proceedings pursuant to Sections 203 (a) and 204 (a) of the Act merely because no enforcement proceedings are currently pending against them?

7. Whether the necessity of preserving petitioners' right to test the validity of the protested regulations in accordance with the demands of due process in the event of future enforcement proceedings against petitioners, which the Emergency Court of Appeals purports to have preserved by its leave to petitioners to move to reinstate the complaint in the event of future enforcement proceedings against petitioners under Section 205 of the Act and

its retainer of jurisdiction for such purpose, does not exist in equal or even larger measure with respect to future criminal proceedings against petitioners under the Criminal Code or state or local price control enforcement laws?

8. Whether the judgment of the Emergency Court of Appeals, dismissing the complaint and failing to grant petitioners leave to move to reinstate the complaint in the event of future criminal proceedings against petitioners under the Criminal Code or state or local price control enforcement laws, does not deprive petitioners of the due process of law guaranteed to them by the Fifth Amendment to the Constitution of the United States and preserved for them by Sections 203 (a) and 204 (a) of the Act?

Reasons Relied on for the Allowance of the Writ.

The reasons relied on for the allowance of the writ are:

1. That Sections 203 (a) and 204 (a) of the Act authorized "any person subject to any provision" of a price regulation issued by the Administrator to "file a protest specifically setting forth objections to any such provisions" and gave to every such person who filed a protest a right to have such protest considered on the merits by the Administrator, and, in case of denial or dismissal, to resort to the Emergency Court of Appeals (Brief, *infra*, 11).

2. That, notwithstanding the exemption of meat from price control, petitioners are still "subject to" the protested regulations and to enforcement proceedings based on violations thereof which may be charged to have been committed by them during the time that meat was subject to price control (Brief, *infra*, 11).

3. That, with respect to any such alleged violation, petitioners are subject not only to enforcement proceedings under Section 205 of the Act, but also to criminal proceedings under Section 37 of the Criminal Code, dealing with conspiracy to commit an offense against the United States, and to criminal proceedings under Section 392 of the General Business Law of the State of New York and Section U 41-5.0 of the Administrative Code of the City of New York, which prohibit violation of any price regulation and make such violation punishable by fine and imprisonment (Brief, *infra*, 14).

4. That Section 204 (d) of the Act deprives the War Emergency Court of the City Magistrate's Court of the City of New York, having jurisdiction over criminal proceedings pursuant to said state or local laws, of jurisdiction to consider the validity of any price regulation and that the ancillary method of testing the validity of price regulations provided by Section 204 (e) (1) of the Act (58 Stat. 632, 639; 50 U. S. C. App. Sec. 924 [e] [1]), in connection with enforcement proceedings under Section 205 of the Act or Section 37 of the Criminal Code, is not available to defendants in criminal proceedings under state or local price control enforcement laws (Brief, *infra*, 12, 14).

5. That the method of testing the validity of price regulations provided by Sections 203 (a) and 204 (a) of the Act, which was employed by petitioners, is the only method provided by the Act to meet the demands of due process in the event of criminal proceedings against petitioners under said New York State or City Laws (Brief, *infra*, 14-15).

6. That the judgment of the Emergency Court of Appeals, dismissing the complaint and failing to grant to petitioners leave to move to reinstate the complaint in

the event of future proceedings against petitioners under the Criminal Code or state or local price control enforcement laws and to retain jurisdiction of the cause for such purpose, deprives petitioners of their right to test the validity of the protested regulations in accordance with the due process guaranteed to them by the Fifth Amendment to the Constitution and preserved for them by Sections 203 (a) and 204 (a) of the Act (Brief, *infra*, 15-16).

7. That the judgment of the Emergency Court of Appeals implies and unmistakeably appears to be based on a construction of Sections 203 (a) and 204 (a) of the Act which is in conflict with the clear language of said sections, the Congressional intent in enacting same, and the construction of the Act and the principles declared by this Court in *Yakus* v. *U. S.*, 321 U. S. 414 (Brief, *infra*, 12).

8. That the judgment of the Emergency Court of Appeals, involving as it does important constitutional rights of petitioners and many other persons similarly situated, involves an important question of Federal law which has not been, but should be, settled by this Court.

WHEREFORE, petitioners pray that this petition for a writ of certiorari should be granted.

Respectfully submitted,

JOSEPH COHN,
Attorney for Petitioners.

Brief in Support of Petition for a Writ of Certiorari.

Statutes, Regulations and Orders Involved.

The pertinent provisions of the Act, the New York State and City price control enforcement laws and Supplementary Order 40 issued by the Administrator, appear in the Appendix, *infra*, 18-25. The price regulations and decontrol order involved are cited in the petition under the heading "Statement of the Matter Involved".

Opinion Below.

No opinion was rendered by the Emergency Court of Appeals.

Grounds of Jurisdiction.

A statement of the grounds on which the jurisdiction of this Court is invoked appears in the petition under the heading "Basis of Jurisdiction".

Statement of the Case.

A statement of the case appears in the petition under the heading "Statement of the Matter Involved".

Specification of Errors.

The United States Emergency Court of Appeals erred:

1. In failing to hold that petitioners had an unqualified right to a determination of the retrospective validity of the protested regulations and to a review by said court of the dismissal of their protests.

2. In failing to hold that the order of the Administrator dismissing the protests, without waiting for recom-

mendations by the Board of Review, was unauthorized and in violation of the provisions of Section 203 (c) of the Act.

3. In dismissing the complaint.

4. In limiting its leave to petitioners to move to reinstate the complaint in the event of future enforcement proceedings against petitioners and its retainer of jurisdiction of the cause for such purpose to future enforcement proceedings under Section 205 of the Act, and failing to grant petitioners like leave and to retain jurisdiction for such purpose in the event of future criminal proceedings under the Criminal Code or state or local price control enforcement laws.

Summary of Argument.

1. Sections 203 (a) and 204 (a) of the Act granted petitioners an unqualified right to a determination of their protests and judicial review of the dismissal thereof.

2. The right of protest, determination and review granted to persons "subject to" price regulations by Sections 203 (a) and 204 (a) of the Act is not conditioned upon an actual pendency or "threat" of enforcement proceedings.

3. The method of testing the validity of price regulations granted by Sections 203 (a) and 204 (a) of the Act and followed by petitioners is the only method provided by the Act to meet the demands of due process in the event of criminal proceedings under state or local price control enforcement laws.

4. The judgment of the Emergency Court of Appeals exposes petitioners to conviction in criminal proceedings under state and local price control enforcement laws without due process of law.

ARGUMENT.

I.

Sections 203 (a) and 204 (a) of the Act granted petitioners an unqualified right to a determination of their protests and judicial review of the dismissal thereof.

The protests, under Section 203 (a) of the Act, sought a determination of the question of validity of the protested regulations, prospectively as well as retrospectively (R26-28). The question of prospective validity became moot when meat was exempt from price control. The same, however, is not true of the question of retrospective validity, as petitioners are still "subject to" the protested regulations and to enforcement proceedings based on violations thereof which may be charged to have been committed by them before the exemption of meat from price control. *U. S.* v. *Hark,* 320 U. S. 531; *Supplementary Order 40 issued by the Price Administrator, as amended,* 11 F. R. 14,103.

It follows that petitioners' right to a determination of the retrospective validity of the protested regulations was not lost by the mere fact that the question of prospective validity has become moot, that petitioners have an unqualified right to such determination and that, having filed a complaint under Section 204 (a) of the Act, petitioners have an unqualified right under said section to have the dismissal of their protests reviewed by the Emergency Court of Appeals. *Collins et al.* v. *Porter,*—U. S.—; 90 L. Ed. 799; *Utah Junk Co.* v. *Porter,*—U. S.—; 90 L. Ed. 796; *Thomas Paper Stock Co. et al.* v. *Porter,*—U. S.—; 90 L. Ed. 790.

II.

The right of protest, determination and review granted to persons "subject to" price regulations by Sections 203 (a) and 204 (a) of the Act is not conditioned upon an actual pendency or "threat" of enforcement proceedings.

The right of protest, determination and review provided by Sections 203 (a) and 204 (a) of the Act is unqualified and not conditioned upon an actual pendency (*cf. Collins et al.* v. *Porter, supra*) or "threat" (*cf. Utah Junk Co.* v. *Porter, supra*) of enforcement proceedings. The unqualified nature of said right is apparent from the language of said sections, which is free from ambiguity, and from the fact that it was provided to meet the demands of due process of law and in order to afford persons subject to any price regulation an opportunity of testing the validity thereof by an independent administrative proceeding in advance of the existence of any such circumstances and, by thus preserving their right of due process, to preclude the defense of invalidity of such regulation in the event of subsequent enforcement proceedings based upon any violation thereof.

It was only because of this broad construction of the statute, which afforded to every person subject to a price regulation an opportunity to preserve his right of due process, that this Court found it possible to and did sustain the provision of Section 204 (d) of the Act (50 U. S. C. App. Sec. 924 [d]), which vested exclusive jurisdiction to determine the validity of a price regulation in the Emergency Court of Appeals and in this Court and withdrew such jurisdiction from all other courts. *Yakus* v. *U. S.*, 321 U. S. 414.

The Congressional intent to afford such right to any person subject to a regulation, without any qualifications of the kind stated above, appears even more clearly from

the fact that prior to the amendment of the Act by the Stabilization Extension Act of 1944 (Public Law 383, 78th Cong., 2nd Sess.; 58 Stat. 632) the attack upon the validity of a regulation in the manner prescribed by said sections was required to be initiated within sixty days from the effective date of the regulation, irrespective of the lack of charge or occurrence of a violation during said period; that no other method of testing the validity of a regulation was provided; and that the right of any person, who failed to test the validity of a regulation within the prescribed period, was forever lost. *Yakus* v. *U. S., supra.*

The unqualified nature of this right was not in any way repealed or qualified by said 1944 amendment of the Act, which authorized the filing of a protest "at any time after the issuance of any regulation" and added to the Act Section 204 (e) (1) thereof (58 Stat. 632, 639; 50 U. S. C. App. Sec. 924 [e] [1]), providing an additional cumulative method of testing the validity of a regulation in certain cases. *Utah Junk Co.* v. *Porter, supra; Collins et al.* v. *Porter, supra; Thomas Paper Stock Co. et al.* v. *Porter, supra.*

The above makes it clear that, in enacting Sections 203 (a) and 204 (a) of the Act, it was the intention of Congress to preserve the right of due process to all persons subject to a price regulation and to enforcement proceedings based on any violation thereof and to afford to such persons the unqualified right of securing a determination of the retrospective validity of a regulation even though no enforcement proceeding is currently pending and no facts constituting a violation are currently known to exist, and also that such right acquired by the institution of a proceeding in the manner prescribed by said sections should continue as long as it may be necessary for any person who instituted such proceeding to preserve his right to test the validity of the regulation alleged to be invalid.

The necessity of preserving their right to test the validity of the protested regulations, in accordance with the demands of due process, clearly exists in the case of petitioners, notwithstanding the exemption of meat from price control and the absence of any current or "threatened" enforcement litigation, as petitioners are still subject to enforcement proceedings based on violations which may be charged to have been committed by them before the exemption of meat from price control, *U. S.* v. *Hark, supra; Supplementary Order 40, as amended, supra,* including criminal proceedings under state or local price control enforcement laws, with respect to which the procedure followed by petitioners is the only available method of testing the validity of price regulations (Point III, *infra*).

III.

The method of testing the validity of price regulations granted by Sections 203 (a) and 204 (a) of the Act and followed by petitioners is the only method provided by the Act to meet the demands of due process in the event of criminal proceedings under state or local price control enforcement laws.

Section 204 (e) (1) of the Act, which provides an ancillary method of testing the validity of a price regulation in connection with any enforcement "proceeding brought pursuant to Section 205 of this Act or Section 37 of the Criminal Code * * * involving alleged violation of any * * * regulation" does not apply to criminal proceedings for such alleged violation brought pursuant to state or local price control enforcement laws. *In Re Nevins Packing Co., Inc., et al.* (E. D. N. Y., Oct. 22, 1946, Misc. 1100, 5 OPA Opinions and Decisions 2062).

With respect to any violation of the protested regulations which may be charged to have been committed by

petitioners before the exemption of meat from price control, petitioners are subject not only to enforcement proceedings under Section 205 of the Act and Section 37 of the Criminal Code, in connection with which an ancillary method of testing the validity of the protested regulations has been provided by Section 204 (e) (1) of the Act, but also to criminal proceedings under Section 392 of the General Business Law of the State of New York and Section U 41-5.0 of the Administrative Code of the City of New York, which make violation of a price regulation punishable by fine and imprisonment and in which proceedings the ancillary method provided by Section 204 (e) (1) of the Act is not available. (R.30)

As the War Emergency Court of the City Magistrate's Court of the City of New York, having jurisdiction of criminal proceedings under said state or local laws, has been deprived by Section 204 (d) of the Act of jurisdiction to consider the validity of any price regulation, and the ancillary method of testing the validity of a regulation provided by Section 204 (e) (1) of the Act will not be available to petitioners in criminal proceedings in said state court under said state or local laws, it follows that the method of testing the validity of the protested regulations provided by Sections 203 (a) and 204 (a) of the Act and followed by petitioners is the only method provided by the Act to meet the demands of due process in the event of criminal proceedings against petitioners under said state or local laws.

IV.

The judgment of the Emergency Court of Appeals exposes petitioners to conviction in criminal proceedings under state and local price control enforcement laws without due process of law.

The Emergency Court of Appeals dismissed the complaint, with leave to petitioners to move to reinstate the complaint in the event of future enforcement proceedings against petitioners under Section 205 of the Act and retained jurisdiction of the cause for such purpose, but failed to grant like leave to petitioners and to retain jurisdiction for such purpose in the event of future criminal proceedings against them under the Criminal Code or state or local price control enforcement laws. (R. 39)

The said judgment, while obviating the necessity of petitioners' invoking the jurisdiction of the Emergency Court of Appeals *de novo* in the event of enforcement proceedings against them under Section 205 of the Act and still leaving to petitioners a limited statutory right to test the validity of the protested regulations in the event of criminal proceedings against them under the Criminal Code, forever bars petitioners from their right to test the validity of the protested regulations in accordance with the demands of due process in the event of criminal proceedings against them under Section 392 of the General Business Law of the State of New York or Section U 41-5.0 of the Administrative Code of the City of New York and exposes petitioners to conviction in such proceedings without due process of law.

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari to review the judgment of the United States Emergency Court of Appeals should be granted.

Respectfully submitted,

JOSEPH COHN,
Attorney for Petitioners.

APPENDIX.

Pertinent provisions of Emergency Price Control Act of 1942 (Public Law 421, 77th Cong., 2nd Sess., 56 Stat. 23, 50 U. S. C. App. Secs. 901-946), as amended by the Stabilization Extension Act of 1944 (Public Law 383, 78th Cong., 2nd Sess., 58 Stat. 632), the Act of June 30, 1945 (Public Law 108, 79th Cong., 1st Sess.), and the Price Control Extension Act of 1946 (Public Law 548, 79th Cong., 2nd Sess.); Sec. 392 of The General Business Law of the State of New York (New York Laws of 1946, Ch. 405); Sec. U 41-5.0 of The Administrative Code of the City of New York (New York City Local Laws for 1945, No. 35); Supplementary Order No. 40 issued by the Administrator, as amended (11 F. R. 14,103), are as follows:

Pertinent Provisions of Emergency Price Control Act of 1942, as Amended.

"*Sec. 203* (*a*)—At any time after the issuance of any regulation or order under Section 2, or in the case of a price schedule, at any time after the effective date thereof specified in Section 206, any person subject to any provision of such regulation, order, or price schedule may, in accordance with regulations to be prescribed by the Administrator, file a protest specifically setting forth objections to any such provision and affidavits or other written evidence in support of such objections. Statements in support of any such regulation, order, or price schedule may be received and incorporated in the transcript of the proceedings at such times and in accordance with such regulations as may be prescribed by the Administrator. Within a reasonable time after the filing of any protest under this sub-

section, but in no event more than thirty days after such filing the Administrator shall either grant or deny such protest in whole or in part, notice such protest for hearing, or provide an opportunity to present further evidence in connection therewith. In the event that the Administrator denies any such protest in whole or in part, he shall inform the protestant of the grounds upon which such decision is based, and of any economic data and other facts of which the Administrator has taken official notice.

* * * * *

(*c*)—Any proceedings under this section may be limited by the Administrator to the filing of affidavits, or other written evidence, and the filing of briefs: Provided, however, That, upon the request of the protestant, any protest filed in accordance with subsection (a) of this section after September 1, 1944, shall, before denial in whole or in part, be considered by a board of review consisting of one or more officers or employees of the Office of Price Administration designated by the Administrator in accordance with regulations to be promulgated by him. Such regulations shall provide that the board of review may conduct hearings and hold sessions in the District of Columbia or any other place, as a board, or by subcommittees thereof, and shall provide that, upon the request of the protestants and upon a showing that material facts would be adduced thereby, subpoenas shall issue to procure the evidence of persons, or the production of documents, or both. The Administrator shall cause to be presented to the board such evidence, including economic data, in the form of affidavits or otherwise, as he deems appropriate in support of the provision against which the protest is filed. The protestant shall be accorded an opportunity to

present rebuttal evidence in writing and oral argument before the board and the board shall make written recommendations to the Price Administrator. The protestant shall be informed of the recommendations of the board and, in the event that the Administrator rejects such recommendations in whole or in part, shall be informed of the reasons for such rejection.

* * * * *

Sec. 204 (*a*)—Any person who is aggrieved by the denial or partial denial of his protest may, within thirty days after such denial, file a complaint with the Emergency Court of Appeals, created pursuant to subsection (c), specifying his objections and praying that the regulation, order, or price schedule protested be enjoined or set aside in whole or in part. A copy of such complaint shall forthwith be served on the Administrator, who shall certify and file with such court a transcript of such portions of the proceedings in connection with the protest as are material under the complaint. Such transcript shall include a statement setting forth, so far as practicable, the economic data and other facts of which the Administrator has taken official notice. Upon the filing of such complaint the court shall have exclusive jurisdiction to set aside such regulation, order, or price schedule, in whole or in part, to dismiss the complaint, or to remand the proceeding * * *.

(*d*)—Within thirty days after entry of a judgment or order, interlocutory or final, by the Emergency Court of Appeals, a petition for a writ of certiorari may be filed in the Supreme Court of the United States, and thereupon the judgment or order shall be subject to review by the Supreme Court

in the same manner as a judgment of a circuit court of appeals as provided in Section 240 of the Judicial Code, as amended (U. S. C. 1934 edition, title 28, sec. 347). The Supreme Court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this subsection. The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order issued under Section 2, of any price schedule effective in accordance with the provisions of Section 206, and of any provision of any such regulation, order, or price schedule. Except as provided in this section, no court, Federal, State, or Territorial, shall have jurisdiction or power to consider the validity of any such regulation, order, or price schedule, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this Act authorizing the issuance of such regulations or orders, or making effective any such price schedule, or any provision of any such regulation, order, or price schedule, or to restrain or enjoin the enforcement of any such provision.

(*e*) (*1*)—Within thirty days after arraignment, or such additional time as the court may allow for good cause shown, in any criminal proceeding, and within five days after judgment in any civil or criminal proceeding, brought pursuant to Section 205 of this Act or Section 37 of the Criminal Code involving alleged violation of any provision of any regulation or order issued under Section 2 or of any price schedule effective in accordance with the provisions of Section 206, the defendant may apply to the court in which the proceeding is pending for leave to file in the Emergency Court of Appeals a

complaint against the Administrator setting forth objections to the validity of any provision which the defendant is alleged to have violated or conspired to violate. The court in which the proceeding is pending shall grant such leave with respect to any objection which it finds is made in good faith and with respect to which it finds there is reasonable and substantial excuse for the defendant's failure to present such objection in a protest filed in accordance with Section 203 (a). Upon the filing of a complaint pursuant to and within thirty days from the granting of such leave, the Emergency Court of Appeals shall have jurisdiction to enjoin or set aside in whole or in part the provision of the regulation, order, or price schedule complained of or to dismiss the complaint. The court may authorize the introduction of evidence, either to the Administrator or directly to the court, in accordance with subsection (a) of this section. The provisions of subsections (b), (c) and (d) of this section shall be applicable with respect to any proceeding instituted in accordance with this subsection."

SEC. 392 OF THE GENERAL BUSINESS LAW OF THE STATE OF NEW YORK, AS AMENDED.

"*Sec. 392—Violation of Regulations and Orders of Federal Price Administrator.* 1. Any person who shall violate any regulation or order established by the price administrator pursuant to the emergency price control act of nineteen hundred forty-two, as amended, or the second war powers act, as amended, shall be punishable by a fine of not more than twenty-five dollars or five days in jail or both * * *.

For the purpose of conferring jurisdiction upon courts and judicial officers generally such violations shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations, provided, however, that courts of special sessions outside the City of New York and city magistrates' courts in the City of New York, in the first instance, shall have exclusive jurisdiction to hear and determine charges of such violations * * *.

Nothing contained in this section shall be construed to supersede or repeal the provisions of any local law on the same or a similar subject.

2. The provisions of this section shall remain in force and effect only until July first, nineteen hundred forty-seven."

SEC. U 41-5.0 OF THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK.

"*Sec. U 41-5.0* (*a*)—It shall be unlawful for any person to sell, offer for sale, supply or deliver any commodity or service, or in the course of trade or business buy or receive any commodity or service, for which a maximum price has been or may hereafter be prescribed by any regulation, order or price schedule or any amendment thereof, issued by the office of price administration of the United States of America at a price or other consideration in excess of the applicable maximum price prescribed by the applicable regulation, order or price schedule, or offer, solicit, attempt or agree to do any of the foregoing.

* * * * *

(*d*)—*Penalty.* Any person who, by himself or by another, shall violate any of the provisions of this

local law, shall be subject to fine not exceeding the sum of $500, or to imprisonment for a term not to exceed 90 days, or both, for each such violation.

* * * * *

(*f*)—The provisions of this local law with respect to violations of price regulations, price schedules and orders and rationing orders shall remain in force and effect as long as the acts of the congress of the United States, under the authority of which such price regulations, price schedules and orders and rationing orders are issued, shall remain in force and effect.

* * * * *

(*h*)—This section shall apply to wholesalers, jobbers, manufacturers, distributors and middlemen only."

SUPPLEMENTARY ORDER NO. 40, AS AMENDED.

"*Sec. 1305.54—Effect of repeal, revocation, amendment or other modification of price regulations, and exemption or suspension from price control of commodities.* (*a*)—The repeal, revocation, amendment or other modification of a price regulation or any part thereof or the exemption or suspension from price control of any commodity shall not be deemed to release or extinguish any right, penalty, obligation or liability incurred under the applicable price regulation prior to its repeal, revocation, amendment or modification or prior to the time the commodity was exempted or suspended from price control but such regulation or part thereof shall be treated as remaining in force for the purpose of allowing or sustaining any proper suit, action, prosecution or proceeding with respect to such right, penalty, obligation or liability.

(*b*)—Despite the repeal, revocation, amendment or other modification of any price regulation or of any part thereof, or the exemption or suspension from price control of any commodity, every such price regulation and any price regulation applying to such commodity, shall be deemed to remain in full force and effect so far as may be necessary to enable the Price Administrator or any person whom he may designate to exercise the right to issue any amendment, modification, order or interpretation with respect to any price regulation (including but not limited to the issuance of orders establishing, specifying or revising maximum prices) with respect to any commodity sold prior to such repeal, revocation, amendment or other modification or exemption or suspension from price control of such commodity, whenever such action is deemed appropriate by the Administrator.

(*c*)—The term "price regulation" means a price schedule effective in accordance with section 206 of the Emergency Price Control Act of 1942, as amended, a maximum price regulation, temporary maximum price regulation, supplement or order, or any amendment or supplement thereto or order thereunder heretofore or hereafter issued."

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